



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Uniform Issue List 403.00-00

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LEGEND:

Taxpayer A	XXXXXXXXXX
Company B	XXXXXXXXXX
State C	XXXXXXXXXX
Agreement D	XXXXXXXXXX XXXXXXXXXX
Amount 1	XXXXXXXXXX

Dear XXXXXXXXXXXX,

This letter is in response to the XXXXXXXXXXXX, letter, as supplemented by correspondence dated XXXXXXXXXXXX, and XXXXXXXXXXXX, submitted on Taxpayer A's behalf by its authorized representative. Taxpayer A requests a ruling on whether the appointment of a substitute custodian for certain custodial accounts that are subject to Internal Revenue Code ("Code") section 403(b)(7), pursuant to a business transaction, changes the status of such custodial accounts under Section 8.01 or 8.02 of Revenue Procedure 2007-71, 2007-51 I.R.B. 1184 ("Rev. Proc. 2007-71").

Taxpayer A, makes the following statement of facts and representations under penalties of perjury:

Taxpayer A is a financial institution with its principal offices in State C. Taxpayer A is a broker-dealer and investment advisor registered with the U.S. Securities and Exchange Commission and a member of the Financial Institution Regulatory Authority and the New York Stock Exchange. Taxpayer A has been approved by

the Internal Revenue Service ("Service") as a non-bank trustee under section 1.408-2(e) of the Income Tax Regulations ("Regulations").

Company B is a financial institution with its principal offices in State C. Company B has been approved by the Service as a non-bank trustee under section 1.408-2(e) of the Regulations. Company B is the non-bank trustee of Amount 1 Code section 403(b)(7) custodial accounts ("Accounts"). The Accounts are administered pursuant to Agreement D. Taxpayer A represents that no contributions were made to the Accounts after December 31, 2008. Taxpayer A represents that the Accounts are within the parameters of Sections 8.01 or 8.02 of Rev. Proc. 2007-71. Company B has not established any new Code section 403(b)(7) accounts since December 31, 2008.

Taxpayer A and Company B are engaged in a business transaction pursuant to which Company B will resign as custodian of the Accounts, and pursuant to Agreement D, Taxpayer A will become successor custodian of the Accounts. Taxpayer A represents that all of the terms and conditions set forth in Agreement D will continue and will be applied to Taxpayer A after it becomes the successor custodian in the same manner as the terms and conditions previously applied to Company B.

In addition, Taxpayer A represents that (1) the accumulated benefit of each Account after the substitution of Taxpayer A as custodian will be at least equal to the accumulated benefit immediately before the substitution, (2) after the substitution of Taxpayer A as custodian, the Accounts will be subject to restrictions on distributions that are not less stringent than before the substitution of Taxpayer A as custodian, (3) the resignation of Company B and the subsequent substitution of Taxpayer A as custodian does not violate any federal, state or local law, rule or regulation including but not limited to other aspects of Code section 403(b) and the Regulations thereunder not contemplated in this ruling, and (4) following the completion of the transaction, Taxpayer A will assume the responsibilities required as the non-bank trustee of the Accounts and adhere to all requirements of section 1.408-2(e) of the Regulations pertaining to non-bank trustees.

Ruling Requested

Whether the substitution of Taxpayer A for Company B as custodian of certain 403(b)(7) custodial accounts pursuant to the terms of the governing custodial agreements changes the status of such accounts under Section 8.01 or 8.02 of Rev. Proc. 2007-71.

Law

Code section 403(b) provides for the tax deferred treatment of annuity contracts purchased by certain eligible employers for their employees. Code section

403(b)(7) provides that if the conditions in that section are met, amounts contributed to a custodial account will be treated as amounts contributed to an annuity contract under Code section 403(b)(1).

On July 26, 2007, the Service issued final regulations under Code section 403(b) (72 FR 41128; TD 9340) with a general effective date of January 1, 2009.

Section 1.403(b)-(3)(b)(3) of the Regulations provides, in pertinent part, that a contract does not satisfy 403(b) unless it is maintained pursuant to a written plan.

Following the issuance of the 403(b) regulations, the Service issued Rev. Proc. 2007-71, to provide, in part, guidance with respect to the application of section 403(b) to certain contracts issued before January 1, 2009.

Section 8.01 of Rev. Proc. 2007-71 provides that in the case of a contract issued after December 31, 2004, and before January 1, 2009, by an issuer that does not receive contributions under the plan in a year after the contract was issued, the contract will not fail to satisfy Code section 403(b) for the year merely because the contract is not part of a written plan that satisfies section 1.403(b)-3(b)(3) of the Regulations if the employer makes a reasonable, good faith effort to include the contract as part of the employer's plan that satisfies section 1.403(b)-3(b)(3) of the Regulations.

For the purpose of Section 8.01 of Rev. Proc. 2007-71, a reasonable, good faith effort to include those contracts as part of the employer's plan includes collecting available information concerning those issuers (for which purpose, the information is not required to be collected for issuers that ceased to receive contributions before January 1, 2005) and notifying them of the name and contact information for the person in charge of administering the employer's plan for the purpose of coordinating information necessary to satisfy Code section 403(b).

Section 8.01 of Rev. Proc. 2007-71 further states that as an alternative to the actions described above, a reasonable, good faith effort to include that contract as part of the employer's plan also includes the issuer taking action before making any distribution or loan to the participant or beneficiary which constitutes a reasonable, good faith effort to contact the employer and exchange any information that may be needed in order to satisfy Code section 403(b) with the person in charge of administering the employer's plan.

Section 8.02 of Rev. Proc. 2007-71 provides that in the case of an issuer that holds section 403(b) contracts under a 403(b) plan but ceases to receive contributions before January 1, 2009, for a contract that is for a former employee or beneficiary, the contracts continue to be subject to the requirements of section 403(b) and the final 403(b) regulations to the extent applicable. However, pursuant to section 8.02 of Rev. Proc. 2007-71 a 403(b) plan will not be treated

as failing to satisfy the requirements of section 1.403(b)-(3)(b)(3) of the Regulations if the plan does not include terms relating to those contracts.

Section 8.02 of Rev. Proc. 2007-71 further states that if the participant or beneficiary requests a loan in accordance with Code section 72(p)(2), the relief in that section only applies if the issuer makes such a loan after the issuer has made reasonable efforts to determine: (1) whether the participant or beneficiary has in the prior 12 months has any other outstanding loans from qualified employer plans of the employer (taking into account sections 72(p)(2)(D) and 72(p)(5)) and (2) if the participant or beneficiary has had any such loans, the highest outstanding balance of such loans during that period.

Section 8.02 of Rev. Proc. 2007-71 further states that if the employer is still in existence at the time the issuer is making the loan, then reliance on information from the participant or beneficiary about outstanding loans does not constitute reasonable efforts to determine whether the participant or beneficiary has other outstanding loans from plans of the employer.

The rules in Section 8.02 apply only with respect to a contract that has been issued before January 1, 2009, under a 403(b) plan that is held on behalf of a participant who on that date is a former employee of the employer or for a beneficiary. The issuer may rely on information from the participant as to whether the participant is a former employee, assuming that reliance in that information is not unreasonable given the facts and circumstances.

Conclusion

Based upon Taxpayer A's representations regarding the Accounts, the details of the proposed transaction and the terms and conditions of Agreement D, we conclude that the substitution of Taxpayer A for Company B as custodian of the Accounts pursuant to the terms of Agreement D, does not change the status of the Accounts under Section 8.01 or 8.02 of Rev. Proc. 2007-71.

The ruling contained in this letter is based upon information submitted by Taxpayer A and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or Regulations, which may be applicable thereto.

This ruling assumes that all other applicable requirements of Code section 403(b) and the Regulations are met with respect to the Accounts.

This ruling is directed only to the taxpayer who requested it. Code section 6110(k)(3) provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact XXXXXXXXXXXX at (***) ***-****. Please address all correspondence to XXXXXXXXXXXX.

Copies of this letter have been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

Sincerely yours,

A handwritten signature in cursive script that reads "Donzell Littlejohn".

Donzell Littlejohn, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

CC: XXXXXXXXXXXX, Power of Attorney